

UNITED STATES WESTERN DISTRICT  
OF PENNSYLVANIA

**FILED**

AUG 17 2007

CLERK U.S. DISTRICT COURT  
WEST. DIST. OF PENNSYLVANIA

UNITED STATES OF AMERICA

VS.

CRIMINAL CASE NO. 05-204-01

RAFAEL BALANQUET-HERRERA /

COMES NOW, The Petitioner, RAFAEL BALANQUET-HERRERA, PRO-SE and very respectfully moves this Honorable Court for an order to set aside defendant's sentence to the extent that said sentence was derived in a manner by means violative of the defendant's Constitutional Rights of legal Equal Protection Clause of the United States Constitution, and further seeks to be resentenced in a Constitutional manner as set forth a hearing.

As a preliminary matter, the defendant avers that he is not an Attorney; has no legal or professional training pertaining to the preparation and filing of legal motions or memorandums.

The defendant seek notice of such limitations and prays this court to construe his pleading liberally in light of the Supreme Court's holding in HAINES v. KERNES, 404 U.S. 519 30 L.Ed. 2d. 652 (1972); CRUZ v. BETO, 405 U.S. 319 (1972); LAWLER v. MARSHALL, 898 F. 2d 1196 (6th Cir 1990); HILL v. UNITED STATES, 268 U.S. 424, 430 (1984). The allegations and averments in a PRO-SE pleading must be taken as true and construed in favor of the defendant. See MALONE v. COLYER, 710 F.2d 258, 260 (6th Cir 1983).

Submitted this 10th of August, 2007.

Respectfully,

*Rafael Balanquet*

Rafael Balanquet-Herrera  
Reg. # 08354-068 NEOCC  
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9/17/07

Denied for the following reasons:

1. Defendant/petitioner signed a knowing and voluntary waiver of his right to appeal.
2. Defendant/petitioner's waiver does not result in a miscarriage of justice
3. Defendant/petitioner does not argue that he failed to acquiesce in the waiver.

*Anetta G. Ambrose*